

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

MELISSA HARRIS,)	
)	
Plaintiff,)	
)	Case No.:
v.)	
)	
ALLIED PROPERTY & CASUALTY)	
INSURANCE COMPANY,)	
)	
Defendant.)	

NOTICE OF REMOVAL

COMES NOW Defendant, Allied Property & Casualty Insurance Company (“Defendant”), by and through its counsel of record, and pursuant to 28 U.S.C. §§ 1441 and 1446, and 28 U.S.C. § 1332, hereby removes this action from the Circuit Court of Jackson County, Missouri, based on the following grounds:

1. Defendant has been named in a civil action brought in the Circuit Court of Jackson County, Missouri, assigned Case Number 2016-CV18420. A copy of the Petition was served on Defendant through the Director of the Department of Insurance on October 2, 2020 and is attached as Exhibit 1. The claims against Defendant are for Count I - Underinsured Motorist Claim and Count II - Vexatious Refusal to Pay arising from a motor vehicle accident. (Exhibit 1 at pages 2 and 5.)
2. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), in that it was filed within 30 days of service on this defendant.
3. Removal is proper under 28 U.S.C. §§ 1332, 1441 and 1446 because there is complete diversity of citizenship and the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs, as follows:

a. **Diversity of Citizenship.** Plaintiff is a resident and citizen of Missouri. (Exhibit 1, at paragraph 1.) Defendant is an Iowa company and not a resident of Missouri. (*Id.*, at paragraphs 2 and 5.)

b. **Amount in Controversy.** The matter in controversy exceeds the sum or value of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interests and costs, in that Plaintiff asserts her policy, issued by Defendant, included per person underinsured benefits of \$100,000.00 (Ex. 1 at paragraph 15) and she seeks damages for serious, permanent, and physical bodily injuries to her head, neck, and back, past and future medical expenses, past and future loss of income, pain and suffering, statutory damages, and attorney's fees. (*Id.*, at paragraphs 17-23, 31, and Prayer following paragraph 31.) The amount in controversy, for purposes of diversity jurisdiction in federal court, can be satisfied by combining the damages of Plaintiff's underlying claim(s) with the amount sought in statutory penalties for vexatious refusal. Normally, attorney's fees cannot be included, but since Missouri's vexatious refusal statute is punitive in nature and the punitive damages awarded include attorney's fees, the fees may be considered in determining whether the amount in controversy exceeds \$75,000. *West County Motor Co. v. Talley*, Not Reported in F.Supp.2d, 2011 WL 4478826 (E.D. Mo. 2011), citing *Allison v. Security Benefit Life Ins. Co.*, 980 F.2d 1213, 1215 (8th Cir.1992) (punitive damages); *Capitol Indem. Corp. v. Miles*, 978 F.2d 437, 438 (8th Cir.1992).

4. Defendant will file its Answer to Plaintiff's Petition within seven days after filing this Notice of Removal, pursuant to F.R.C.P. 81(c).

5. The Notice of Filing Removal to Federal Court, which is being filed with the Circuit Court of Jackson County, Missouri is attached hereto as Exhibit 2.

Respectfully submitted,

FRANKE SCHULTZ & MULLEN, P.C.



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**Attorney for Defendant Allied Property &
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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing has been electronically filed, and through the Court's CM/ECF system, a copy will be served electronically on this 29th day of October, 2020 to:

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